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THE LAWS OF MARRIAGE

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BY

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INTRODUCTION

ON AUGUST 2, 1907, there was issued a Papal document furnishing for the Universal Church new legislation on betrothal and marriage. Following an ancient custom in the Church, this document is called from its opening words *Ne Temere*. The law embodied in it went into effect on Easter Sunday, April 19, 1908.

On the eve of the Feast of St. Peter, 1917, the eminent Cardinal Gasparri, President of the Commission for the Codification of Canon Law appointed by Pius X in 1904, presented to His Holiness, Benedict XV, a copy of the Commission's completed work, the *Codex Juris Canonici*. This stupendous work, by the official bull of promulgation entitled "Providentissima Mater Ecclesia," goes into effect as the common law of the Church on Pentecost Sunday, May 19, 1918.

The new code embodies the decrees of the *Ne Temere* with some modifications and makes

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sweeping changes in the present discipline of the Church concerning matrimonial impediments.

The object of the present commentary is to set forth the eminently wise legislation of Holy Church in brief and untechnical language that the faithful may have a correct knowledge of what our holy religion holds concerning Matrimony and what she requires of those about to enter this holy state of life. It is hoped that it will prove of service also to those who are not of the household of the Faith but who are honestly desirous of learning what the Catholic Church teaches on this most important subject.

To learn well the teaching of Holy Church on any given point of doctrine or discipline is to be impressed with her divinity, for all of her legislation breathes a wisdom and a charity that are above and beyond all this world's experience.

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that she depends on the sacrament of Holy Orders for her spiritual perennity.

For the individual, also, marriage is important. Now, as always, the vocation of most men and women is matrimony. Comparatively few are called by God to tread the higher path of celibacy in the religious and priestly state. So marriage becomes the aspiration of the vast majority of mankind. On marriage, therefore, the earthly welfare and eternal happiness of countless thousands depend.

For the children it is of unspeakable importance that their parents regard matrimony as one, holy, and indissoluble. In this age of divorce and neglected children it is unnecessary to expatiate on this.

"According to the general opinion of theologians, matrimony is defined 'the conjugal union of man and woman between legitimate persons, which is to last during life.'

"It is called matrimony because the principal object which a female should have in

getting married is to become a mother (mater); or because to a mother it belongs to conceive, bring forth, train up her offspring. It is also called wedlock (conjugium, a yoke) from the conjugal union of man and wife; because a wife is attached as it were by the same yoke with her husband. It is, moreover, called nuptials (nuptiae, nubere, to veil) because, as St. Ambrose observes, brides veiled themselves through modesty; an observance which also seemed to imply that they should be obedient and subject to their husbands." (*Cat. Council of Trent, Part II, Chap. VIII*).

That marriage is a natural contract few will deny. But we maintain that it has always been a contract of peculiar and important qualities, because on it the welfare of unborn children and generations depends. Hence it is lifelong and, unlike other contracts, not soluble at the will of the parties entering into it. Hence even before it was raised to the dignity of a sacrament by Christ, our Lord, it was a sacred thing and

ordained of God. "And God created man to His own image; to the image of God he created him: male and female He created them. And God blessed them, saying: Increase and multiply, and fill the earth." (*Gen. i, 27, 28.*) Our Divine Lord Himself, commenting on these words, said: "What therefore God hath joined together, let no man put asunder." (*Matt. xix, 6.*)

Marriage is also a civil contract even among baptized persons. The law of the land can and does regulate marriage in its civil effects. This is a legitimate and important exercise of civil authority, safeguarding the legal rights of both spouses and of the offspring in many ways. The Church has no quarrel with the State in this regard. "The marriage of baptized persons is governed not only by the divine but also by the canon law, without destroying the competency of the civil power concerning the merely civil effects of Matrimony."—(*Codex Juris Canonici Can. 1016*).

That marriage in the New Law is, from

Divine institution, a sacrament, is an article of our faith. "If any one say that matrimony is not really and properly one of the seven sacraments of the evangelical law instituted by Christ, but that it has been invented in the Church by men and that it does not confer grace, let him be anathema." (*Council of Trent, Sess, XXIV, Can. 1.*)

A valid marriage of baptized persons is called *ratified*, if not yet completed by consummation; *ratified and consummated* after conjugal relations. "Marriage among non-baptized persons validly celebrated is called *legal*.

"An invalid marriage is called *putative*, if it were celebrated in good faith by one part at least, until both parts become certain as to its nullity."—(*Canon 1015*).

CHAPTER II

The Sacrament

AS a sacrament, matrimony is defined. "A sacrament of the New Law conferring grace for the sanctification of the legitimate union of man and wife and for the lawful begetting of children and their holy upbringing." (*Sabetti-Barrett—Theo. Moral.*)

"The primary end of matrimony is the begetting and educating of offspring, the secondary end is mutual helpfulness and a remedy for concupiscence." (*Can. 1013, par. 1*).

Any baptized person not laboring under an impediment natural, divine or canonical is a proper subject for the sacrament. "All can contract Matrimony who are not prohibited by law."—(*Canon 1035*).

The generally received doctrine is that the minister of matrimony is not the priest but the contracting parties themselves, who do by their

mutual consent to the marriage confer one upon the other the sacrament of matrimony.

Of this Dr. Charles J. Cronin, in his admirable work, "The New Matrimonial Legislation," says: "The part of the priest, as far as concerns the validity of the marriage, is rather a passive than an active one. He exercises no act, either of jurisdiction or of Order or of administration. But since the Church insists that her children shall enter into the contract of marriage and receive the sacrament of matrimony in her presence and with her sanction, she has enacted that the parish priest, either personally or by his delegate, shall assist at the marriage as her representative, as the official, public, ecclesiastical witness, the 'testis qualificatus' or 'auctorizabilis' (the qualified or authoritative witness).

"For, though the presence of the parish priest is not an act of jurisdiction, still the Church has required that her official witness to the marriage should be qualified by the possession of spiritual jurisdiction, or at least of the office to which spiritual jurisdiction over

the contracting parties is attached. And it is only fitting that the pastor, the spiritual father, should be the official representative of the Church at this solemn religious act of his spiritual children.

“The priest, however, is the minister of the sacred ceremonies which constitute the rite of matrimony as distinct from the essence of the contract and sacrament. He imparts the blessing of the Church, etc.” (*Pages 58, 59.*)

It is essentially required for marriage that there be true consent, which should be mutual (i. e., both the bride and bridegroom concur in it), perfectly deliberate (a real human act) and expressed by external signs. No consent less than this will suffice for a contract begetting such grave obligations and having such far-reaching effects.

Moreover (by the New Code) it is required that the priest ask and receive the consent of the contracting parties.

All this is safeguarded and assured by the form of marriage in the ritual commonly used here.

The priest first asks the bridegroom:

"N., wilt thou take N., here present for thy lawful wife, according to the rite of our Holy Mother the Church?"

R.—"I will."

Then the priest asks the bride:

"N., wilt thou take N., here present, for thy lawful husband according to the rite of our Holy Mother, the Church?"

R.—"I will."

The man says after the priest:

"I, N. N., take thee, N. N., for my lawful wife, to have and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, until death do us part."

Then the woman says:

"I, N. N., take thee, N. N., for my lawful husband, to have and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, until death do us part."

Then the priest blesses the ring, and the bridegroom, having received the ring from

the priest, puts it on the ring finger of the left hand of the bride, saying:

“With this ring I thee wed, and I plight unto thee my troth.”

CHAPTER III

Properties and Effects

“THE essential properties of matrimony are unity and indissolubility, which in Christian matrimony have a peculiar firmness because of the sacrament.” (*Can. 1013, par. 2,*)

The unity of marriage consists in this—that it is the legitimate union of one man and one woman. Plurality of wives, or simultaneous polygamy, while it is less in accordance with mutual helpfulness between man and wife, is not opposed to the primary end or object of matrimony, the procreation and education of offspring. God did for a time in the Old Law permit such polygamy for the multiplication of the chosen race.

Our Divine Lord, however, restored marriage to its original unity. The Holy Office, in an Instruction of March 28, 1860, says:

"It is quite certain that polygamy is absolutely illicit by the evangelical law. Hence after Jesus Christ has re-established the former sanctity, unity and indissolubility of marriage, and had added to the contract the dignity of a sacrament for those who are baptized, it is not lawful either for an infidel or for a Jew or for any man to take more than one wife. Consequently, monogamy having thus been divinely reinstated, it is an undeniable dogma of faith that there can be a lawful and valid marriage only between one man and one woman."

By indissolubility of the marriage bond, we mean that marriage contracted and consummated among baptized persons cannot be dissolved except by death. This was the original notion of marriage. There was no mention of divorce until the introduction of the Mosaic Law. As Christ said "Moses by reason of the hardness of your heart permitted you to put away your wives; but from the beginning it was not so." (*Matt. xix.*, 8.) Again speaking of the New Law, He says without

restriction or exception, "Every one that putteth away his wife, and marrieth another, committeth adultery, and he that marrieth her that is put away from her husband, committeth adultery." (*Luke* xvi., 18.)

Thus, as the above quoted instruction of the Holy Office puts it, "Christ re-established the former sanctity, unity and indissolubility of marriage."

The effects of the sacrament of matrimony, as of all sacraments worthily received, are: First, a grant of sanctifying grace. Those receiving the sacrament of matrimony are supposedly in the state of sanctifying grace already. Hence matrimony gives an increase of this grace in the soul and a right to a correspondingly higher degree of glory in heaven. The second effect is sacramental grace, by which is understood a right to all the helps necessary for obtaining the end for which the sacrament was instituted. In matrimony these sacramental or actual graces are helps to preserve and perfect mutual love, to keep conjugal fidelity and chasity inviolate, to bring

up children in the fear and love of God and to bear the burdens of married life with Christian patience and fortitude.

From our catechism we learned that two of the sacraments, Baptism and Penance, are of the dead, namely, intended, generally speaking, for those dead in sin; and that the other five, Confirmation, Eucharist, Extreme Unction, Holy Orders and Matrimony, are sacraments of the living, to be received, that is, by those living the life of grace in freedom from mortal sin. To receive any one of these five latter sacraments in mortal sin is to commit a sacrilege.

Hence those conscious to themselves of grievous sin should first make humble and sincere confession before daring to receive the sacrament of matrimony. Indeed, among baptized persons no distinction is possible between the contract of marriage and the sacrament of matrimony. The one cannot be entered into without receiving the other. When Christ raised matrimony to the dignity of a sacrament He did not add a separable

note to the marriage contract, but made that contract into a sacrament. All, therefore, who are baptized received of necessity a sacrament when they contract marriage.

CHAPTER IV

Clandestine Marriages

THE word clandestine is in itself (and more especially in its application to marriages) of sinister import. It means "furtive," "secret," "hidden." When applied to marriages, it means that they are not performed in the presence of the proper ecclesiastical authorities and with suitable witnesses—"in facie ecclesiae," under the eyes of the Church, as the Synod says—but stealthily, before magistrate or non-Catholic minister or without two witnesses.

One of the most important works undertaken by the Holy Council of Trent (A. D., 1545 to 1563) was the reformation of matrimony. It says, speaking of clandestine marriages, "the Holy Church of God has always for most just reasons abominated and prohibited them." (Sess. XXIV., Chap. I.).

It laments that, because of the disobedience of men, the mere prohibition of such marriages did not avail to prevent them and their attendant evils. The Holy Synod devised two means of combating the great evils of such marriages, namely (1) the proclamation of the banns and (2) the law of clandestinity. Of the banns we shall speak later.

The Council enunciated the law of clandestinity as follows: "Those who shall attempt to contract marriages otherwise than in the presence of the parish priest (or other priest with the permission of the parish priest or of the Ordinary) and two or three witnesses, the Holy Synod makes entirely incapable of so contracting, and decrees that such contracts are invalid and null." (Sess. XXIV, Chap. 1—"Tametsi.") By it clandestine marriages become null and void and the resultant union an unlawful concubinage.

It was necessary, however, that this law be promulgated or published in each parish before its enactments became binding in that particular place. Hence there were many

difficulties because the law was promulgated in some places and not in others and doubts arose as to whether the law was or was not in force in a particular locality at a given time. Oftentimes, too, there was serious question as to who was the parish priest of the contracting parties.

All such doubts and difficulties are obviated by the new marriage legislation.

First, Because it went into effect automatically on April 19, 1908, for the Universal Church;

Second, The parish priest before whom the marriage must take place is more clearly defined.

The chief provision of the new marriage law is as follows:

"Only those marriages are valid which are contracted before the parish-priest or the Ordinary of the place, or a priest delegated by either of these, and at least two witnesses." (Canon 1094).

By the Ordinary of the place is meant the Bishop of the diocese, the Vicar General (or,

where such exist, the Vicar Capitular, the Vicar Apostolic, certain abbots, the Papal Legate a latere) and, of course, the Roman Pontiff, who has immediate, ordinary, universal, full and supreme jurisdiction in every parish and every diocese.

By the parish-priest is meant the head of a canonically erected parish, our rectors of churches, and in most dioceses every assistant priest, under, of course, the obedience and direction of the pastor.

It would seem that in the United States assistant priests are not authorized to assist at marriages, at least not by virtue of their office as assistants. Dr. Cronin concludes "that as far as the United States is concerned, there is positive evidence for the presumption that coadjutors (assistants) have not this power to assist at marriages without delegation." (*New Matrimonial Legislation* p. 206.)

In many dioceses they are so empowered to act by direct delegation of the Ordinary. Archbishop Ryan in a circular letter of April 11,

1908, to the priests of the Philadelphia diocese said :

“To prevent mistakes in regard to the priests qualified to perform the marriage ceremony, we hereby declare that all assistant priests, administrators and substitutes appointed by us shall be vested with full power to assist at the valid celebration of marriage within the limits of the parishes, missions, or stations to which they are now or shall be assigned. But whilst thus delegated for the validity of such marriages they shall be dependent on the authorization of their several pastors for the lawful exercise of these powers.” Many other Bishops have given similar authorization to the assistant priests of their dioceses.

All those enumerated above, namely the Bishop, within his diocese ; the priest, within his parish, etc., can in their own territory validly marry or delegate another priest to marry, and can give permission to their subjects to be married elsewhere.

Witnesses are all those having the use of reason, even minors, whether Catholics or

non-Catholics, men or women, relatives of the contracting parties or strangers. For validity it is required only that there be two present who are capable of testifying to the fact of the marriage. It should be unnecessary to add that whenever possible only practical Catholics should be asked to act as witnesses to the matrimonial contract. In case of necessity the priest will gladly furnish proper and discreet witnesses for any marriage.

Valid and licit. Any act is valid which has all the essentials requisite for producing its proper effect; invalid if it lacks any one of the essentials. A licit act is one that besides conforming to all the essential requirements of the case also obeys all laws directive of its mode of procedure. A valid marriage conforms to the law printed on page twenty in italic type, a licit marriage also conforms to the laws of good order to be enumerated later. (See page 27—“*Licit Marriages.*”)

CHAPTER V

The Banns

BANNS are public notices of a proposed marriage read or posted in the church in order that any one knowing of any impediment to the proposed union may reveal it to the proper authority. "Let the publications take place in the church on three successive Sundays and other feasts of obligation during the principal Mass, or other divine services which the people attend in numbers." (Can. 1024.) This ecclesiastical law, according to Sabetti-Barret, binds under pain of mortal sin. (*Theol. Mor. Tract xviii, n. 843.*)

In case the bride and bridegroom live in different parishes the banns are to be proclaimed in both parish churches.

The banns are not published when the ecclesiastical authorities have granted a dispensation for a mixed marriage.

"All the faithful are bound, if they know of any impediments, to reveal them, before the celebration of the marriage, to the Ordinary or pastor of the place." (Can. 1027.) "If within six months the marriage has not been contracted, the banns shall be repeated unless it shall seem otherwise to the Ordinary of the place." (Can. 1030, *par.* 2.)

The pastor is not free to omit the banns even though he feels sure that no impediment to the marriage exists.

Thus far we have the general law regarding the publication of the banns of marriage, but the Church is a loving Mother, and all her laws are for the edification and not for the damnation of her children; hence she does for sufficient reason and through the proper channels relax her ordinary discipline.

It may be that the parents of the couple or others wish maliciously and unjustly to prevent the marriage, or that infamy would come to the contracting parties, or that they are already considered by the public as man and

wife by reason of an attempted or civil marriage.

In these and other cases where the ecclesiastical authorities consider that a canonical reason is present, a dispensation from the proclamation of the banns will be granted. This dispensation is not given to the contracting parties but to the priest, to whom these and all other marriage questions must first be referred.

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CHAPTER VI

Licit Marriages

WE HAVE seen what the law of the Church requires for a valid marriage. To violate any of the requirements of this law would be to make the marriage null and void, that is, no marriage at all. But when the essential features of the law as to witnesses, parish-priest, etc., are complied with, the Church still, for the sake of good order, requires certain things for the lawful celebration of matrimony.

I The priest (or Ordinary) who is to perform the marriage must make sure that the future husband and wife are free to marry. "Before marriage is celebrated it ought to be certain that nothing prevents its valid and licit celebration." (Can. 1019, par. 1.)

In our day, when the habits of people are so migratory and when in large cities apartment

houses are largely taking the place of the homes we have been accustomed to, it is almost impossible for a priest to know all his people. Accordingly he finds it necessary to make some inquiries before he consents to act as the authoritative witness of the Church in such cases.

It is, of course, harder to be sure of the freedom to marry of the couple in the case of mixed marriages, because (1) the banns are not proclaimed, and (2) the non-Catholic party may have previously contracted marriage and then secured a divorce, which in his eyes and the eyes of the civil authorities leaves him free for new nuptials.

Of course no priest can perform such a marriage ceremony unless the diocesan matrimonial Curia pronounces the former marriage invalid. Such a declaration of invalidity has from time to time been given not because of the civil divorce or the wealth or prominence of the parties concerned, but because the Curia decided after accurate investigation that the previous marriage was for some reason or

other null and void. But the rule is that where a marriage ceremony has been gone through with, even though it appears to have been certainly invalid, the case must be submitted by the priest to the *Curia before he may arrange for new nuptials for either of the parties concerned. This by way of digression.

The law of the Church is—"Let the parish priest whose right it is to assist at the marriage diligently investigate at an opportune time beforehand whether anything stand in the way of the marriage." (*Can. 1020, par. I.*)

"Let him prudently question both the groom

*The officials of the Bishop's Court or Curia (for matrimonial causes) are the *Auditor*, the *Defensor Vinculi*, and the *Notarius*. The Auditor examines the case, cites the parties concerned, hears witnesses, etc., and then refers the matter to the Bishop, who is by virtue of his office judge in this and other causes. The Auditor may, however, have from the Bishop jurisdiction in deciding causes. He is then a judge-delegate. It is the duty of the *Defensor Vinculi*, or defender of the marriage, to be present at every case and to adduce every argument and consideration possible to sustain the marriage whose nullity it is sought to prove. The *Notarius*, or secretary, keeps an accurate record of all the testimony in the case and the conclusion arrived at.

and the bride even separately whether they are bound by any impediment; whether they freely, especially the woman, give their consent, and whether they are sufficiently instructed in Christian doctrine, unless on account of the standing of the persons this last interrogation seem superfluous." (*Ibid.*, par. 2.)

In a word, it is left to the prudence and experience of the priest to use what means he deems necessary to prevent irreverence to the Sacrament or the deceiving of either of the contracting parties by the other. He may require those who are strangers to him to take an oath as to their freedom to marry or to bring testimonial letters from their former pastors.

II It is likewise required that one of the contracting parties has a domicile, or a quasi-domicile, in his parish or has lived there for a month before the priest can lawfully assist at their marriage unless, of course, he has permission to marry them from their own pastor or Ordinary.

There are in the above paragraph four ele-

ments to be considered, a domicile, a quasi-domicile, a month's residence, and permission from the pastor or Ordinary of one or other of the parties.

The modern civil codes and the canon law both borrow their idea of domicile from the Roman law. A domicile of a person is that place in which his habitation is fixed without any present intention of removing therefrom (*locus perpetuae habitationis*).

“‘Two things must concur,’ says the same eminent jurist (Story), ‘to constitute domicile—first, residence; and secondly, intention of making it the home of the party, and when once domicile is acquired it is not shaken off by occasional absences for the sake of business or of pleasure, or even by visits to a former domicile or to one’s native country’.” (*Woolsey, quoted in Century Dictionary.*)

In the sense of the marriage law, a man’s domicile is his home or the place where he is permanently residing. It would seem that a person primarily acquires a domicile in a parish and, through the parish, in the diocese of

which the parish is a part. Canon law allows a double domicile in the case where a person has two places of residence, for instance a winter home and a summer home, and the marriage may take place in either parish.

"Domicile is acquired by dwelling in a parish or quasi-parish, or at least in a diocese, an Apostolic vicariate, an Apostolic prefecture; which dwelling either is joined with the intention of remaining there perpetually, if nothing calls one away thence, or has been continued for ten years complete.

"Quasi-domicile is acquired by dwelling as above, which is joined with the intention of remaining there for at least the greater part of a year* if nothing calls one thence, or has in fact been continued for the greater part of a year." (*Canon 92, par 1 and 2*).

*By "the greater part of a year" canonists understand a period of more than six months.

CHAPTER VII

Licit Marriages (Continued)

WHERE the requirements of a domicile or a quasi-domicile are not verified, by the new law of the Church a month's residence suffices for licit celebration of a marriage. A very good summing up of these points is given by Dr. Cronin. (*"The New Matrimonial Legislation,"* p. 182.)

1 "Neither domicile, nor quasi-domicile, nor any period of residence in the locality where the marriage takes place, is necessary for its validity.

2 "For the licit celebration of the marriage, residence of at least one month in the place is necessary, if neither of the contracting parties is domiciled there. If one of them possesses a domicile in that place, the marriage may be celebrated both validly and licitly from the day on which the domicile began to exist.

Otherwise, a full month of residence must be passed. Intention to remain for a month is not sufficient.

"By a month, some authors (*e. g.*, *Cardinal Gennari*) understand a period of thirty days. Others think that a calendar month should be reckoned, which will, therefore, be of twenty-eight, twenty-nine, thirty, or thirty-one days, according to the particular month in which the calculation has to be made. Either opinion may be followed in the absence of an authoritative decision on the point."

Furthermore, to quote the learned canonist and moralist, Father Barrett. "We ought not interpret too rigorously in this matter. Accordingly if a person after having begun to reside in a place were absent one or two days, this would not hinder his being said at the end of thirty days to have resided there a month."

"Moreover, dwelling in a place here signifies residence; so it can happen that a person works during the day in one parish, but has his place of residence in another. His pastor as regards matrimony is the rector of the latter

(place of residence) and not of the former (place of employment). To dwell in a place by no means requires continual presence there." (*Theol. Moral. Tract xviii, Cap. vi., Quaer. 3*).

If neither of the contracting parties has a domicile, a quasi-domicile, or a month's residence, the parish priest (which term includes assistants, as a rule) and the Ordinary of the place, to assist licitly at a marriage, require the permission of the parish priest or the Ordinary of one of the contracting parties unless it be a case of grave necessity, which excuses from this requirement.

This permission must be carefully distinguished from delegation. The priest who can validly marry in a given territory can also delegate another priest to marry validly in that territory; but he cannot outside of his own territory delegate at all. Moreover delegation must be real and actual and antecedent to the marriage whereas permission can be presumed in certain cases.

For example's sake, the priests at the Ca-

thedral can validly marry all (free to marry, of course) who present themselves; they can also within the limits of the Cathedral parish delegate another priest, for instance from St. John's, to perform the marriage in their stead; but they could not delegate a priest in St. John's to perform a marriage in St. Patrick's Church or rectory. They can, however, give permission to the priests of St. John's to marry a couple who live in the Cathedral parish, but who desire for some reason to be married in St. John's.

In other words, if a couple having parochial rights in some other place present themselves to a priest for marriage he can *validly* marry them, but before he can *licitly* marry them he must first obtain permission (*licentia*) from their own pastor or Ordinary. The law is careful to state, however, that grave necessity excuses a priest from seeking this permission.

In regard to those who have no fixed abode ("*V'agi*," *vagrants*) the pastor shall not be permitted, outside a case of necessity, to assist at their marriage unless he shall have

submitted the matter to the Ordinary or a priest delegated by him and shall have obtained permission to assist.

"A person is called . . . a vagrant if he have no where a domicile or a quasi-domicile." (*Canon 91.*) "Let the pastor never assist at the marriage of vagrants, except in case of necessity, unless, after referring the matter to the Ordinary of the place or a priest delegated by him, he shall have obtained permission to assist." (*Canon 1032.*)

III "In every case it shall be the rule that marriage be celebrated before the parish priest of the bride, unless a just reason excuses." (*Canon 1097, par. 2.*)

Up to this time the common law of the Church did not favor one pastor more than another in the case where the bride and the groom lived in different parishes. The custom, however, widely prevailed that the marriage take place in the parish church of the bride. This was a very reasonable custom, based on the dictates of courtesy that the bridegroom should seek the bride in her own church

and because custom decreed that any marriage festivities be held at the home of the bride. Moreover, diocesan regulations in some places gave the prior right to the pastor of the bride to perform the marriage ceremony.

"Now for the first time it is made the universal rule that the marriage be celebrated before the parish priest of the bride, unless there is just cause for celebrating it before the parish priest of the bridegroom.

"A just cause excuses from this rule; so that a grave or urgent reason is not necessary. Any good reason of convenience, utility, etc., therefore, will suffice to make the celebration of the marriage before the parish priest of the bridegroom licit." (*Cronin, op. cit., p. 194.*)

In the case of mixed marriages the rule (in most dioceses) is that the marriage take place before the pastor of the Catholic part.

IV "Unless the baptism was conferred in his own territory the parish priest will require a testimonial of baptism from both par-

ties, or only from the Catholic part, if there is question of marriage to be contracted with a dispensation from the impediment of disparity of worship." (*Can. 1021, par. 1.*)

This law is not found in the "*Ne Temere*," but was decreed by the Sacred Congregation of the Sacraments (March 6, 1911), and is now embodied in the new code of canon law.

It gives the parties concerned and the priest a surety as to the fact of baptism, a matter of no little importance. The writer of this article has had experience of four persons coming to be married who had lived all their lives as Catholics and were probably never baptized. This deplorable fact was revealed when they began to seek a testimonial of baptism.

Then the law guarantees and facilitates the operation of another canon (No. 1103), that a record of marriage be kept in the baptismal register, so that if one or other of the spouses was baptized elsewhere it becomes the duty of the officiating priest to notify the pastor of that place, who will make the proper entries in his register of baptisms. The ad-

vantages of having two or more registries of so important an event as marriage are so obvious as not to need comment.

The possibility of fraud is lessened if a record of marriage can be found after the record of baptism when the contracting parties apply for the required certificate of baptism. Most priests are adding the date of issue on baptismal certificates for the same reason.

In America, "the melting pot of the nations," the obtaining of a baptismal certificate is sometimes no easy matter. People come here from great distances and are sometimes not sure of the place of their birth. Sometimes in remote places records have been lost or destroyed by fire. In some instances a long delay of marriage would be necessitated if the law were rigorously insisted upon. It would seem that where it is morally speaking impossible to obtain a certificate of baptism the law in that particular instance ceases. In the vast majority of cases, however, there is an obligation in conscience to obtain the baptismal certificate.

“Catholics who have not yet received the Sacrament of Confirmation should receive it before they are admitted to matrimony if they can do so without grave inconvenience.”
(*Canon 1021, par. 2.*)

CHAPTER VIII

The Impediments

WE HAVE seen that marriage, though raised to the dignity of a sacrament by Christ our Lord, still retains its character of contract; in fact, the marriage contract between Christians is the sacrament of matrimony. We know that the law of the land regulates business and other contracts, imposing formalities without which the contract becomes null and void. Such regulation is both desirable and necessary, as lawyers and business men agree.

Now, the Church is the custodian and dispenser of the sacraments. True, She cannot institute a sacrament; that is a prerogative of Christ Himself, who instituted seven such signs of grace, but She can impose conditions for the proper reception of the sacraments. As regards marriage She can, as circum-

stances demand, establish conditions additional to those already imposed by the natural and divine law. She can make regulations whose violation would render the marriage contract unlawful or even invalid. This is an article of our faith: "If any one say that the Church could not establish impediments nullifying marriage, or that She has erred in establishing them, let him be anathema." (*Council of Trent, Sess. XXIV, Can. iv.*)

In this sense an impediment may be defined, "any circumstance of which the law takes cognizance that is opposed to a licit or valid marriage." (*D'Annibale, Summula III, n. 428.*) Impediments are of two sorts, nullifying, which render a marriage invalid (*impedimenta dirimentia*); and prohibitory, which render it merely illicit (*impedimenta impedientia*)

1 "A prohibitory impediment contains a grave interdiction of contracting matrimony, which nevertheless is not rendered invalid if, despite the impediment, it is contracted.

2 "A nullifying impediment both gravely

forbids the contracting of matrimony, and prevents its valid contracting.

3 "Although the impediment is only on the part of one, nevertheless it renders matrimony either illicit or invalid." (*Canon 1036*).

Some impediments arise from the natural law, some from the divine law, and some are purely ecclesiastical.

[Law is divided into *natural* and *positive* law. The natural law consists of those laws and obligations which flow so necessarily from the nature of God and creatures that they cannot cease to exist; and are so co-eval with the nature of men that their principles are known to anyone who has the use of reason. The natural law is immutable.

The positive law embraces laws enacted by the free will of God or of men and thus is either divine or human. As follows from the definition the positive law can be changed for the various circumstances of times, of persons and of places.

Human law may be either *ecclesiastical*,

civil, or the *law of nations*. Only the first two need concern us here.

Ecclesiastical law is that body of laws respecting faith, morals and discipline by which the Church is governed and the faithful guided to their spiritual good and eternal happiness. It is also called canon law. The common ecclesiastical or canon law is now embodied in the *Codex Juris Canonici*.

The civil law is the collection or body of laws by which each nation is directed to the common good no matter what its form of government may be.]

The prohibitory impediments, which if not dispensed from, make a marriage unlawful but do not nullify it, are as follows:

I "A simple vow of virginity, of perfect chastity, of not marrying, of receiving Sacred Orders, and of embracing the religious state hinders matrimony." (*Canon 1058, par. 1.*)

A vow is a deliberate and free promise made to God concerning something that is possible and is also a greater good. It is to God alone that a vow is made, so that its fulfillment be-

comes an act of religion. It differs from a resolution which, however firm, begets no new obligation, unless accidentally.

A solemn vow is one that is accepted as such by the Church, as in certain religious orders; all other vows are simple.

"No simple vow annuls matrimony, unless for some a nullifying force was established by special prescript of the Apostolic See." (*Canon 1058, par. 2.*)

II "In those regions where by civil law legal relationship arising from adoption renders marriage illicit, marriage is illicit by canon law also." (*Canon 1059.*)

Adoption, as here used, signifies an act by which a person with the consent and co-operation of the civil authorities takes for his child one who does not belong to him. By adoption there arises between the adoptant and the adopted, a purely legal relationship. The canon law in this matter follows the civil law of particular countries or places so that legal relationship in the New Code is either a nul-

lifying or a merely prohibitory impediment accordingly as the civil law decides.

III The Church everywhere most severely forbids marriage between Catholics and baptized heretics or schismatics*

IV The Church also deters the faithful from contracting marriage with Catholics who have notoriously given up the faith even though they have not joined a non-Catholic sect, or who have enrolled themselves in societies condemned by the Church*

V She also forbids her pastors to assist at the marriage of public sinners and persons publicly under ecclesiastical censure who refuse to go first to confession or to be reconciled to Holy Church*

*See Chapter X on "Mixed Marriages."

CHAPTER IX

Nullifying Impediments

THE nullifying impediments are as follows:
I. Lack of age. "A man cannot enter into valid matrimony before he has completed the sixteenth year of his age, a woman before she has completed her fourteenth year." (*Can. 1067, par. 1.*)

For the first time the Church appoints a definite age earlier than which marriage is invalid. Formerly the law considered individuals capable (*habiles*) of entering valid matrimony when they had arrived at puberty—an age which varied with countries and individuals.

The presumption of the Roman law, which the Church followed in this matter, was that boys arrived at puberty at the age of fourteen years, girls at twelve years. The question was one of fact, however, and not of law. If the

contracting parties were capable of marriage earlier and the circumstances of the case warranted a marriage ("if malice made up for lack of age") the marriage would be valid. Now this is changed and marriage is invalid before the age set down in the Canon.

The Church is careful to add, however, "Although marriage contracted after the above mentioned age," (sixteen years completed, fourteen years completed) "is valid, nevertheless let pastors of souls take care to deter youths from it before the age at which, according to the accepted custom of the place, marriage is usually entered into." (*Canon 1067, par. 2.*)

II Certain physical defects. These by the law of nature itself render marriage invalid. (*Can. 1068.*)

III The bond of a previous marriage (Ligamen). "They who are bound by a former marriage, even though it were not consummated, invalidly attempt marriage, the privilege of the faith remaining intact." (*Can. 1069, par. 1.*)

This requires some explanation. The privilege of the faith here spoken of is called the Pauline Privilege, because it is based on the words of St. Paul (*I. Cor. vii.*, 15): "If the unbeliever depart, let him depart. For a brother or sister is not under servitude in such cases. But God hath called us in peace."

St. Paul found that the lot of some of his converts to Christianity who had been married to pagans before entering the Church was unendurable. The pagan partner refused to live peaceably with the convert husband or wife. Bitter quarrels arose, insults were offered to the true God, and so the conversion to the faith ushered in a life of misery for many a husband or wife. Often, too, the pagan repudiated the Christian partner and fled to new nuptials.

Led by the Holy Spirit, the great Apostle of the Gentiles taught that the convert to the faith was under such hard circumstances freed from the pagan consort and capable of entering a new marriage: "A brother or sister is not under servitude in such cases." This still ob-

tains, so that marriage contracted between non-Christians can be dissolved in favor of the convert to Christianity who cannot live peaceably with the non-Christian husband or wife. "A legal matrimony among those who are not baptized, even though it were consummated, is dissolved in favor of the faith from the Pauline privilege." (*Can. 1120, par. 1.*)

Moreover, even Christian marriage which has not been consummated can be dissolved by the solemn profession of one of the parties in a religious order approved by the Church or by dispensation granted by the Holy See. "A non-consummated marriage between baptized persons or between a baptized person and one who is not baptized is dissolved, first, by law itself through solemn religious profession, and secondly, by dispensation granted for just cause by the Apostolic See at the request of both parties or one of them even if the other be unwilling." (*Can. 1119.*)

IV Disparity of Worship. "Marriage is null when contracted by a non-baptized person with a person baptized in the Catholic

Church or converted to it from heresy or schism." (*Can. 1070, par. 1.*)

V Holy Orders. Those who have received the sub-diaconate, diaconate, priesthood or episcopate cannot validly enter into marriage. "They invalidly attempt marriage who are clerics in sacred orders." (*Can. 1072.*)

VI Solemn Vows, namely, vows made in a religious order whether of men or of women that has a solemn profession of its members. "Likewise religious who have professed solemn vows or simple vows to which by special prescript of the Holy See there has been annexed the force of nullifying marriage, invalidly attempt marriage." (*Can. 1073.*)

VII Presumed lack of consent owing to the abduction (*raptus*) of the woman. The Church has ever been most zealous in safeguarding the freedom of consent in marriage. This sacred contract she would have entirely free. Accordingly, if a man forcibly carry off or detain a woman to compel her to marry him, he is by canon law incapable of valid-

ly marrying her while she remains in his power.

1 "Between the abductor and the woman who was abducted for the sake of marriage there can be no marriage while she remains in the power of the abductor.

2 "But if after having been abducted she has been removed from the abductor and in a safe and free place consents to have him for her husband, the impediment ceases.

3 "As far as the nullity of marriage is concerned, the forcible retention of a woman is equivalent to abduction, when namely a man by violence detains a woman for marriage in a place where she dwells or to which she has of her own accord gone." (*Can.* 1074.)

VIII Crime. They cannot validly marry each other who have violated the sanctity of marriage by adultery with a promise to marry or an attempted marriage; or who committed adultery and murdered the other spouse; or who physically or morally co-operated in the murder of husband or wife, even though the crime of adultery was not committed.

IX Consanguinity. "The relationship or connection of persons descended from the same stock or common ancestor." It is a relationship of blood and is thereby distinguished from *spiritual* relationship engendered by baptism and *legal* relationship arising from adoption. This blood-relationship arises in two ways, first, by the descent of one person from another, as father and child, grandfather and grandchild. This is called the direct line (*linea recta*). Secondly, it takes place when the kinship is derived from the same common ancestor where, however, one relative is not descended from the other but forms with him two branches, as it were, on the same tree. This is seen in the case of two brothers, two cousins, etc. This is called the transverse or collateral line (*linea collateralis*).

1 "Consanguinity is reckoned by lines and degrees.

2 "In the direct line there are as many degrees as there are generations, or as there

are persons, not counting the common stock.

3 "In the oblique line, if both series are equal, there are as many degrees as there are generations in one series of the line; if the two series are unequal, there are as many degrees as there are generations in the longer series." (*Canon 96.*)

The degree is the measure of the distance of one person from another in the same line. The common stock (*stipes*) is that man or woman from whom the others descend by natural generation and in whom they meet as in a first root. Thus brothers have as their root or stock their father, children of brothers (cousins, cousins-german) unite in their grandfather as in a common stock.

It is universally admitted to be contrary to the dictates of nature for a parent to marry his child. There is likewise an universal horror amongst civilized peoples at the thought of an union between brother and sister, though it does not appear that this latter is opposed to the natural law.

In the present discipline of the Church, con-

sanguinity in any degree in the direct line is an impediment nullifying marriage; in the collateral line to the third degree inclusive.

As far as the impediment is concerned, consanguinity is only multiplied when the common stock is multiplied, e. g., if two brothers marry two women who are cousins, the children of each brother will be related to those of the other in the second degree on the father's side and in the third degree on the mother's side. Accordingly there is a double impediment arising from multiplied consanguinity, which should be mentioned in the application for a dispensation.

The common law of the Church on consanguinity is as follows: "In the direct line of consanguinity matrimony is invalid between all ascendants and descendants, whether legitimate or natural. In the collateral line matrimony is invalid unto the third degree inclusively, in such a way, however, that the impediment to matrimony is multiplied only as often as the common stock is multiplied. Matrimony is never permitted if a doubt ex-

ist whether the parties are blood relatives in any degree in the direct line or in the first degree of the collateral line. (*Can.* 1076).

The reasons that inspired the Church in adopting and extending the laws of the Roman state concerning the marriages of near relatives are not far to seek. In earlier and more troublous times the good of society demanded that the feelings of amity and good-fellowship engendered by intermarriage of families be extended as far as possible and not confined within the narrow circles of kinship.

Moreover, children begotten of closely related couples seem oftentimes to inherit or at least to incur the bad traits, physical or moral, of both parents and few of their good characteristics. Very often, too, such unions are childless, as though nature herself condemned them.

In the moral order also, it is a valuable safeguard that young persons of both sexes thrown into the habitual intimacy that consanguinity begets, should realize that between

them there must be a regard so sacred as to preclude all thought of marriage.

X Affinity. Affinity is a relationship analogous to consanguinity, on which it is based, whereby the husband becomes related to the wife's blood relatives and the wife to the husband's.

Affinity is computed in degrees precisely as consanguinity is, so that the measure of a person's affinity with one of a married couple is the measure of his consanguinity with the other.

1 "Affinity arises from valid marriage whether it is only ratified or both ratified and consummated.

2 "It obtains only between the man and the blood relatives of the woman, and likewise between the woman and the blood relatives of the man.

3 "It is so reckoned that they who are blood relatives of the man are in the same line and degree affines of the woman, and vice versa." (*Canon 97.*)

In the present discipline of the Church af-

finity does not produce affinity so that the relatives of the man do not become relatives of the woman's relatives, or vice versa.

The present law of the Church is. "Affinity in the direct line is a nullifying impediment of matrimony in every degree; in the collateral line unto the second degree inclusive. The impediment of affinity is multiplied,

1 As often as the impediment of consanguinity from which it proceeds is multiplied,

2 By repeated marriage successively with a blood relative of a deceased spouse."
(*Canon 1077*).

XI Public Decorum. "The impediment of public decorum arises from an invalid marriage, whether consummated or not, and from a public or notorious concubinage; and annuls marriage in the first and second degree of the direct line between the man and the blood relatives of the woman and vice versa."
(*Canon 1078*).

XII Spiritual Relationship. In the new birth of Baptism it is considered that a spir-

itual kinship precluding marriage springs up between the parties most intimately concerned in that sacred function.

The present law of the Church is: "Only that spiritual relationship annuls marriage, of which there is mention in Canon 768." (*Canon 1079.*)

"From Baptism the one baptizing and the sponsor contract a spiritual relationship only with the person baptized." (*Canon 768.*) By virtue of spiritual relationship, therefore, marriage is invalid between the person who baptizes a child and the child; between the sponsor (godparent) and the child.

XIII Legal Relationship. A purely legal relationship arises from adoption. It exists only between the adoptant and the adopted. The Church wishes us to follow the law of the land in this matter: "They who by the civil law are held incapable of contracting marriage with each other on account of legal relationship arising from adoption cannot by virtue of the canon law validly contract marriage with each other." (*Canon 1080.*) Ac-

cordingly in any given country this may or may not be an impediment nullifying matrimony.

XIV Error. Error concerning matrimony is of two sorts, first, *substantial*, regarding a person or a quality affecting the person; second, *accidental*, which merely regards some quality or qualities of the person. Marriage with a slave who is believed to be a free person is invalid.

1 "Error concerning a person renders marriage invalid.

2 "Error concerning a quality of a person, even though it be the cause of the contract, annuls marriage only,

(a) "If the error of quality results in error of person.

(b) "If a free person contracts marriage with a person whom he believes to be free, but who is on the contrary a slave in servitude properly so called." (*Canon* 1083.)

XV Fear. 1 "Marriage is also invalid when entered into on account of force or grave fear

inflicted from without and unjustly, to free himself from which the person is compelled to choose marriage.

2 "No other fear even though it give cause for the contract brings with it nullity of marriage." (*Canon 1087.*)

XVI Clandestinity. "Only those marriages are valid which are contracted before the parish-priest or the Ordinary of the place, or a priest delegated by either of these, and at least two witnesses." * (*Canon 1094.*)

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*See Chapter IV—"Clandestine Marriages."

CHAPTER X

Mixed Marriages

MARRIAGES between Catholics and non-Catholics are called mixed marriages. If the non-Catholic part be baptized there exists an impediment of mixed religion which must be dispensed from by proper authority before the marriage can be lawfully entered into. If the non-Catholic part be not baptized there is present the impediment of disparity of worship. The latter impediment, unless a dispensation intervene, does of itself render the marriage null and void.

“Everywhere the Church most severely forbids marriage to be entered into between two baptized persons, one of whom is a Catholic but the other is enrolled in an heretical or schismatical sect; if, however there is danger of perversion for the Catholic spouse and the

offspring, wedlock is forbidden by the divine law itself." (*Canon 1060.*)

I "The Church does not give a dispensation from the impediment of mixed religion, unless:

1 Just and weighty causes urge;

2 The non-Catholic part give safeguards concerning the removing from the Catholic part of the danger of perversion, and both parts (give safeguards) concerning the Catholic baptism and education of all the children,

3 There be moral certainty as to the fulfillment of these safeguards.

II The safeguards must, as a rule, be demanded in writing." (*Canon 1061.*)

"The Catholic part is under obligation prudently to look to the conversion of the non-Catholic." (*Canon 1062.*)

"Although there has been obtained from the Church a dispensation from the impediment of mixed religion, the contracting parties cannot either before or after entering into marriage before the Church go also either per-

sonally or by proxy to a non-Catholic minister as a religious functionary, to give or renew the matrimonial consent." (*Canon 1063, par. 1.*).

"Marriage is null when contracted by a non-baptized person with a person baptized in the Catholic Church or converted to it from heresy or schism." (*Canon 1070, par. 1.*)

The Fathers of the Third Plenary Council of Baltimore (A. D., 1884,) have this to say (*Titulus iv., n. 130*): "The Church has always been opposed to marriages between Catholics and non-Catholics; first, because of the shameful union in divine things, and second, because of the very grave danger there is in such marriages either of loss of faith to the Catholic part or a wrong bringing up of the children that may be born. Hence it is that when there is a question of the impediment of mixed religion the Church never grants a dispensation without a grave cause and the promise of employing the safeguards (*cautiones*) by which the danger for the Catholic part and the offspring is removed.

“The safeguards are the following: That not only cannot the Catholic spouse be perverted by the non-Catholic, but on the contrary must understand that he is bound according to his ability to withdraw the non-Catholic from error; and also that all children of both sexes that shall be begotten of these mixed marriages shall be thoroughly educated in the Catholic religion. And these precautions can never be remitted or dispensed from since they are founded on the natural and divine law which the Church and the Holy See strive with all zeal to keep unimpaired, and without a doubt those who expose themselves and their future offspring to the danger of loss of faith by rashly contracting mixed marriages sin most grievously against this law.

“However, these safeguards are not a sufficient reason for obtaining a dispensation for mixed marriages, but only an essential condition. And so for granting a dispensation it is not by any means enough that the marriage couple are prepared to adopt these safeguards,

but in addition a good and weighty canonical reason is distinctly required, and without this it is not allowed to the faithful to expose themselves even with due precautions to grave danger to faith and morals. In this matter we must, however, consider the circumstances of the place, the surroundings and the persons involved, especially when there is danger of a greater evil lest by denying a dispensation mixed marriages be contracted anyhow and that clandestinely and without safeguards."

Every priest who has charge of souls here in the United States can bear testimony to the wisdom of the Church's laws in this matter.

True, most priests are familiar with some mixed marriages that have turned out happily. Husband and wife never quarrel about religion, the children are well instructed in the faith and attend Catholic schools. The non-Catholic is interested in the religious welfare of the little ones and occasionally attends divine service with them. It even happens sometimes that after some years of married life the non-Catholic spouse embraces the true faith.

This is undeniably true. Sad that the reverse should be so much more frequently realized!

Catholics are in the minority here. The atmosphere is not one of religion, certainly not notably favorable to the Catholic religion. Even under the almost ideal conditions of the mixed marriage we have sketched above, what is to become of the children if their Catholic parent dies? Who will rear them and in what religion? If they are young and are brought up in a non-Catholic atmosphere may we not reasonably fear for a loss of faith on their part?

And then conditions are so very often the reverse of ideal. The Catholic part of the marriage is plunged at once into an atmosphere not friendly to the Church, very often downright inimical to all religion. It takes a strong character to rise above one's environment. Hence we see such married Catholics grown indifferent to holy Mass and the sacraments, the children attending public schools and religiously neglected, hardly knowing which religion is theirs, that of the Catholic or the

non-Catholic parent. All these evils are multiplied a hundredfold in the succeeding generations of such marriages.

Thus it is that the Church only permits such marriages. The ceremony is not performed in the Church, but elsewhere, no blessing is given, no sacred vestment or sacred rite is used. "In the entering into such marriages the Church orders omitted generally those things by which the marriages of Catholics are adorned." (*Rit. Rom. Modus Assist. Matr. Mixt.*)

By law it is required that the non-Catholic desiring to marry a Catholic sign promises safeguarding the Catholic and the children. In the Philadelphia diocese these promises are as follows:

AGREEMENT.

I, the undersigned, not a member of the Catholic Church, wishing to contract a marriage with a member of the Catholic Church, propose to do

so with the understanding that the marriage bond thus contracted is indissoluble, except by death, and I promise on my word and honor that he (or she) shall be permitted the full and free exercise of religion according to his (or her) belief and that all children of either sex born of this marriage shall be baptized and educated in the faith according to the teachings of the Catholic Church.

(Signature

Signed in presence of

Place Date

This signed agreement is sent by the priest to the chancellor together with the application for a dispensation from the impediment either of mixed religion or disparity of worship.

“But when a mixed marriage is contracted with the due safeguards indicated above and after a dispensation has been obtained, it ought, of course, to be counted legitimate, seeing that it is entered into by persons whom the Church acknowledges to be under these circumstances capable of validly and lawfully

contracting matrimony. Let no one dare, therefore, to condemn this marriage and much less brand it with the note of sacrilege." (*III Plenary Council of Baltimore, Titulus IV, n* 132).

It is interesting as well as important to note the legislation which the new Code of Canon Law appends to its decrees on mixed marriages:

"Also let the faithful be deterred from contracting matrimony with those who notoriously have given up the Catholic faith, even though they have not gone over to a non-Catholic sect, or who are enrolled in societies condemned by the Church. (*Can. 1065, par. 1.*)

"Let the parish priest not assist at the above-mentioned nuptials before consulting the Ordinary, who will be able after having examined all the circumstances of the case to permit him to assist at the marriage provided a grave reason urges and the Ordinary decides in his prudent judgment that the Catholic education of all the children is sufficiently safeguarded and the danger of perversion of

the other spouse removed. (*Ibid.*, *par.* 2.)

“If a public sinner or one who is notoriously under censure refuse first to approach sacramental confession or to be reconciled to the Church let the parish priest not assist at his marriage unless a grave cause urges, about which, if possible, let him consult the Ordinary.” (*Can.* 1066.)

CHAPTER XI

The Nuptial Mass

NO ONE who has ever attended a Nuptial Mass needs to be told that, after the first public reception of Holy Communion, it is the most beautiful church function in which the laity are principals. The young couple are admitted within the sanctuary, to places ordinarily reserved for clerics; the priest is clad in white, indicative of joy and holy purity; he performs the ceremony in his official vesture as a priest about to offer the adorable Sacrifice of the Mass.

The Church allows the ordinary course of her hallowed liturgy to be departed from that this Nuptial Mass may be said and, what is of greater import, permits the sacred canon of the Mass to be interrupted that the spouses may receive the public and official blessing of Holy Mother Church. Truly the Church does

everything in her power to show on what a high and holy plane the sacrament of matrimony stands.

The Nuptial Mass is a votive Mass; that is, it does not correspond to the office of the day, but is said, under fixed rules, in place of it. It is called *Pro Sponso et Sponsa*, "for the Bridegroom and Bride," and can be traced to the very earliest ages of Christianity. It is composed of passages of Sacred Scripture (*Introit, Epistle, Gospel, etc.*) suitable to the sacrament of matrimony and contains prayers and a special blessing for persons just married.

On certain solemn days and feasts of higher rank the Nuptial Mass cannot be said. The Mass of the day with its prescribed color of vestments is then celebrated, with the addition of the Prayer, Secret, Post-Communion and Nuptial Benediction from the Mass "for Bridegroom and Bride."

The nuptial blessing is thus inseparably bound up with the Nuptial Mass (or a Mass taking its place) so that it cannot be given

outside of Mass. The one supposes the other.

It can be given only once to a bride, so that a widow contracting nuptials who has received this blessing at her former marriage cannot receive it again. But it can be given, if the female (for whom it is specially intended) has not yet received it, even though she be a widow with children. It need not, however, follow the marriage immediately, but can be given after years of married life.

At certain seasons of the year the Nuptial Mass cannot be said nor can its special features be inserted in the Mass of the day. This is called the closed season (*tempus clausum*) and corresponds to Lent and Advent.

It is to be noted, however, that in the general law of the Church marriages may take place on any day, at any time. It is only the solemnity of the Nuptial Mass and blessing that is forbidden. Hence marriages may take place even in Lent and Advent. Those, however, desiring to be married in these closed seasons must be content with the form of marriage in the ritual and should, of course, avoid

pomp and feasting in these times of penance. They may laudably receive the nuptial blessing after the forbidden season is past.

The new Code of Canon Law gives the law of the Universal Church as follows: "Matrimony can be contracted at any time of the year. Only the solemn blessing of the nuptials is forbidden from the first Sunday in Advent till Christmas Day inclusive, and from Ash Wednesday to Easter Sunday inclusive." (*Can.* 1108.)*

While there is no obligation, at least from the common law of the Church, to receive the nuptial blessing, we feel it our duty to urge all to be so married. Apart even from its intrinsic beauty, it is the time-honored, distinctively Catholic way of entering the holy state of matrimony. The Church has always regarded Holy Mass as the most fitting concomitant for her more important events, such as ordinations, consecrations of churches, etc. Marriage she regards as a most solemn and important event, hence her mind is that her

faithful children be married with the Nuptial Mass and blessing.

"Frequently and earnestly let them (the pastors of souls) inculcate that holy and laudable rite of the Church by which the faithful contract matrimony, not at night, but at the time of Mass with the nuptial blessing. In this way they make a silent profession of their Catholic faith and show before all how high and honorable a regard they have for the dignity and holiness of matrimony. And indeed this seems not merely praiseworthy but well nigh necessary in these our times, when the enemies of religion leave nothing untried to rob matrimony of every semblance of holiness, of every semblance of a sacrament and to have it regarded as a mere civil contract." (III. Plen. Council of Baltimore, N. 125.)

CHAPTER XII

Dispensations

IT IS obvious that the power which makes a law can also abolish that law in whole or in part. "A dispensation, or relaxation of a law in a special case, can be granted by the founder of the law, by his successor or superior, and also by him to whom the above mentioned have granted the power to dispense." (*Canon 80.*)

If the legislator suppress the law entirely his act is called abrogation or repeal of the law. A partial revoking of the law is called derogation. Dispensation differs from both these in as much as it leaves the law in force for the community, but relaxes it for an individual.

The Church laws are for Catholics the world over, for men and women living under widely varying customs and conditions. According-

ly it often happens that a law, good and useful in itself, would in a particular instance work hardship. In such instances the Church has power to relax for the benefit of an individual the general law. The exercise of this power is called a dispensation.

The matrimonial impediments constitute laws and where they have their origin in the ecclesiastical authority the Church can, of course, dispense from them. The Pope of his own right has full power to dispense from all ecclesiastical laws whether particular or universal. He can also "by derived power communicated to him as Vicar of Christ, and the limits of which he determines by his *magisterium*, or authoritative teaching power," dispense from the Divine law in the matter of vows, oaths and unconsummated marriages.

"Except the Roman Pontiff, no one can abrogate the impediments of the ecclesiastical law whether prohibitory or nullifying or derogate from them; or even dispense from them, unless this power was granted by the

common law or by special indult by the Apostolic See." (*Canon 1040.*)

However, the dispensing power of a Bishop of a diocese is, by virtue of the faculties granted him by the Holy See, very extensive. These fixed perpetual faculties are added to by Papal Indults granted for a certain length of time or for a fixed number of cases.

The Vicar General also can grant dispensations, for in matters of jurisdiction he is regarded as the Ordinary, and his tribunal is identical with that of the Ordinary. There is, therefore, no appeal from the Vicar to the Bishop.

In practice dispensations are as a general thing granted through the Chancellor of the diocese who receives from the priests their applications for such, and either settles the cases himself within the limits of his powers or refers them to the Ordinary.

A canonical reason is always required and must be expressed before a dispensation can be given. It is taken for granted that the statements made by the petitioner are true.

Any concealment or falsehood essentially affecting the motive which induces the superior to dispense, would make the dispensation invalid, except in the case of minor impediments.

In matrimonial dispensations, except for the poor, the payment of a sum of money is required as a tax. This is not a payment for the dispensation, which is always granted gratis, but as a contribution to the necessary upkeep of the chancery.



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